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OMAFRA Perspective on Large Livestock Barns, Community Issues and the Role of the Municipality

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Introduction

Farming and food production are vital to the well being of Ontario. Not only do these activities literally put food on our table; they contribute \$25 billion to Ontario's economy and employ close to 650 thousand people.

In Ontario there has been a 290 percent increase in rural non-farm population from 1931, to 1991. This non-farm population is several generations removed from farming and has little understanding of modern agriculture. More than 52 percent of Ontario's 61,432 farms produced livestock in 1991. The number of Ontario farms is down from 68,960 in 1981.

Farms have increased in size, and tend to specialize in one or two commodities. The result is higher concentrations of livestock, manure and buildings. While individual farms have grown in size for over 100 years, there has been an exponential growth in the size of swine farms very recently. Consequently, the potential for local conflicts has increased. Farmers only represent approximately 15 percent of rural Ontario, and have a relatively small voice on local councils.

Larger farms currently are subject to increasing numbers of complaints. These complaints often request municipalities or environmental agencies to direct farm practices, and bylaws may be passed to restrict farm practices. These complaints include odour, well water concerns, pollution, changes to the neighbourhood and NIMBY-ism. These complaints usually occur before the barn is constructed. Individual livestock farms should be able to continue to grow as long the new or expanding farms can demonstrate the growth is environmentally sustainable.

Since the source of the rising complaints on farms is due to many cumulative factors, the solution must address the many factors behind the complaints. The approach may include awareness of agriculture, education of all parties, separation distances, good land use planning, environmental farm plans and farm practices protection legislation. Municipalities should be dealing with issues before they become emotional.

The following tools will help provide a framework for municipalities in developing good proactive by-laws, which will enable an environmentally and economically sustainable growth in Ontario's livestock industry.

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Minimum Distance Separation (MDS)

The Guide to Agricultural Land Use and the Minimum Distance Separation I and II are the successors to the 1976 Agricultural Code of Practice. Taken together, they form a two-pronged approach to reducing land-use conflicts in rural areas.

The Guide to Agricultural Land Use introduces issues that sometimes arise between agriculture and other land uses in the Ontario countryside. It advises farmers on how to avoid or reduce conflicts with neighbours and environmental impacts through the use of appropriate farm practices and equipment. The Minimum Distance Separation formula focuses on proper siting of buildings, whether for farm or non-farm purposes to prevent odour complaints.

Provincial Policy Statement Section 2.1.4 states:

"In prime agricultural areas, agricultural uses, including the creation of lots, and new or expanding livestock facilities will comply with the minimum distance separation formulae."

This Policy Statement is issued under the authority of Section 3 of the *Planning Act*. It provides policy direction on matters of provincial interest related to land use planning and development.

MDS is available in booklets or on disk, and can be adopted using the MDS model by-law.

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The Certificate of Compliance Program

The Certificate of Compliance Program, established in 1972, is a joint Ontario Ministry of Agriculture, Food and Rural Affairs and Ministry of Environment and Energy program. The Agricultural Code of Practice, which includes the Guide to Agricultural Land Use and Minimum Distance Formulae, provides guidance on the physical layout, siting and management of livestock operations in the interests of maintaining or enhancing environmental quality. It forms the basis of the Certificate of Compliance Program, which is meant to assure the farmer, and the rural community that what is being done or proposed is environmentally acceptable. It has also been used as assurance to loan organizations that the applicant for financial assistance has an acceptable operation, is a good manager, and that the enterprise is not likely to be inhibited, restricted or unsuccessful due to environmental considerations. Although the Certificate of Compliance Program is a voluntary exercise, many municipalities have passed by-laws requiring a Certificate of Compliance for proposed livestock buildings and manure storages. The program is currently being revised to incorporate nutrient management plans.

The Certificate of Compliance Program helps provide reassurance to the farmer and the community that a farm is following good environmental practices.

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The Ontario Farm Environmental Coalition (OFEC)

The Ontario Farm Environmental Coalition (OFEC) is a coalition of Ontario farm organizations led by the Ontario Federation of Agriculture, Christian Farmers Federation of Ontario, AGCare (Agricultural Groups Concerned About Resources and the Environment), and the Ontario Farm Animal Council.

It was established in July, 1991, to set a workable agenda for Ontario's farming

community to adopt regarding environmental concerns associated with agricultural production practices. The outcome was "Our Farm Environmental Agenda", a document released in January, 1992. This publication outlined environmental concerns that farmers had identified regarding water quality, soil quality, air quality, agricultural inputs, and natural areas such as wetlands and woodlots. The water quality concerns made specific reference to agricultural nutrients.

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Ontario Environmental Farm Plan (EFP)

A key recommendation found with "Our Farm Environmental Agenda" was to have every Ontario farmer develop and implement an environmental plan, tailored to his/her own particular farm operation. OFEC acted upon this recommendation by establishing an Environmental Farm Plan (EFP) Working Group to develop and pilot test an EFT model for the Province. In this endeavour, OFEC received technical assistance from the provincial ministries of Agriculture, Food and Rural Affairs, Natural Resources, and Environment. The result was Ontario's EFP program, which has been recognized internationally as one of the finest tools available to assist farmers in managing environmental concerns at the farm level. Funding for both the EFP Pilot Project and the EFP Program, which followed, was provided through Agriculture and Agri-Food Canada's Green Plan Program. To date, more than 12,000 Ontario farmers have heightened their awareness of environmental issues related to agricultural practices by attending EFP Workshops. The EFP is a voluntary program that should be encouraged, however it is not suitable for inclusion in by-laws.

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OFEC's Nutrient Management Planning Strategy

The "Nutrient Management Planning Strategy" provides a science-based, nutrient management planning process for both the agricultural community and municipal sectors to use in setting and implementing standards which allow the province's farming sector to continue to grow and prosper with minimal environmental and societal impacts. Balancing the science-based aspect of nutrient management planning is the concept of good neighbour policies, the most important being to never take a neighbour's complaint lightly.

Basic Principles

1. Farmers do not have the right to violate pollution laws, and anyone doing so should be held accountable.
2. Farmers should document and periodically review their nutrient management plans.
3. Farmer's support having the agricultural industry and governments work co-operatively to achieve a consensus on pollution prevention standards regarding agricultural nutrients.
4. Farmers must follow acceptable nutrient management standards for pollution prevention.
5. Farmers will be encouraged to maintain or enhance their stewardship goals relating to nutrient management.

Assumptions

1. All farms **should** prepare an NMP.
2. Some farmers **must** prepare an NMP.

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Triggers in Municipal By-Laws for Those Who Must Prepare an NMP

Application for a building permit associated with expanding a livestock operation by 10 L.U. (livestock units) or more and,

--- the expanded operation exceeds 150 L.U.

or,

--- the expanded operation exceeds 50 L.U. with a livestock density greater than 2 L.U. per tillable acre.

Building Permit Requirements:

- preparation of a written NMP that indicates nutrients will be handled in a way that does not harm the environment
- compliance with minimum distance separations presented in MDS I and MDS II
- farm operations with a liquid manure system should meet provincial standard of 240 days storage
- 200 days storage may be accepted when supported by an NMP that has undergone an acceptable third-party verification
- in some situations OMAFRA may agree to grant a certificate when all standards are not met

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Complaints Process

- OFEC recommends that in areas where complaints related to nutrient management are likely, a Nutrient Management Advisory Committee be established at the county level
- if the Committee deems the complaint to be invalid, a letter with an explanation of the Committee's reasoning will notify the complainant
- if the Committee views the complaint as valid it will attempt to mediate between the complainant and the farmer

Municipal By-laws Relating to Nutrient Management

OFEC has identified three key components that municipal by-laws relating to nutrient management should contain. They are:

1. Certain livestock operations must prepare an NMP.
2. Farm operations requiring an NMP must also meet manure storage capacity requirements.
3. Minimum distance separations (MDS I and MDS II) must be complied with.

The "Nutrient Management Planning Strategy" includes guidelines and a model by-law to assist municipalities in regulating the management of agricultural nutrients. There has been some debate about the legislative authority for municipalities to regulate and monitor nutrient management plans. The attached model by-law can be adopted under current legislation.

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Bill 146 The *Farming and Food Production Protection Act*

The purpose of the *Act* is to expand the farmer's protection from nuisance actions currently provided under the *Farm Practices Protection Act* and to ensure that the farming and food production industry in Ontario is protected from restrictive municipal by-laws that constrain normal farm practices.

Bill 146 received Second Reading in the Legislature on December 17, 1997. The Bill was referred to the Standing Committee on Resource Development. Hearings were held in Belleville, Toronto and Guelph on February 17, 18 and 19, 1998. A clause by clause session was held on March 10, 1998. Third reading was May 6, 1998 and Royal Assent was received on May 11, 1998.

In recent years farmers have been asking for stronger protection. Changing trends in agriculture and food production (e.g. farms are increasing in size, farmers are specializing in one or two commodities) and in rural communities (e.g. changing rural demographics, expansion of residential subdivision in rural areas) have increased the need for review of the Act.

The Ontario Ministry of Agriculture, Food and Rural Affairs organized a preliminary consultation with stakeholders early in 1996. The need for open public consultation was identified. A discussion paper was written to identify the issues. The consultation process included well attended open meetings held at various locations across the province, written submissions from interested organizations and individuals, participation at the 1997 annual meeting of the Rural Ontario Municipal Association (ROMA) and discussions with the current members of the Farm Practices Protection Board.

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Principal Elements

An underlying principle in both the previous *Farm Practices Protection Act* and Bill 146, is the continuing requirement of compliance with other provincial environmental legislation of general application such as the *Environmental Protection Act*, *Pesticides Act*, *Health Protection and Promotion Act* and the *Ontario Water Resources Act*. The purpose of the Bill is to strengthen the protection of farming and food production while keeping it in harmony with health, safety and the environment of Ontario.

The previous Act protects farmers from legal actions brought under the common law of nuisance for odours, noise and dust caused by normal farm practices. The new Act adds light, smoke, vibration and flies to this list.

The definition of an "agricultural operation" is being refined, updated and clarified (e.g. "on-farm processing" has been clarified to indicate that the processing is primarily of products produced on the farmer's agricultural operation). Additional agricultural activities are described (e.g. the production of agricultural crops now includes maple syrup, tobacco, trees and turf grass; and livestock includes ratites).

The Act contains a clause, which provides that a new or existing municipal by-law that has the effect of restricting a normal farm practice being carried out on an agricultural operation does not apply to the normal farm practice to the extent that the by-law restricts it. This determination would be made after a hearing. In addition, a truck, delivering or picking up farm products to or from an agricultural operation, may not be restricted by municipal by-law from using highways at prescribed times provided that the use is in accordance with normal farm practice.

A multi-staged approach for dealing with municipal by-laws will include:

- a) Education programs by ministry staff and farm groups will provide municipalities with an understanding of what constitutes a normal farm practice.
- b) Municipalities will be encouraged to consult with farmers and farm groups prior to creating by-laws that might impact farming activities.
- c) The Minister will issue "Farm Practices Policy Statements" that are to be used as guidelines or directives. These policy statements are expected to be general in nature, for example, new and expanding livestock facilities will comply with minimum distance separation formulae.

In addition to municipal education efforts, there will be a public education program to help minimize disputes. Through farm group partners the ministry will develop and implement an education/awareness program, which focuses on the realities of living in rural Ontario. Non-farming rural citizens will be targeted with the message that, as with many industries from time to time, some unpleasant disturbances may occur

arising from normal farm practices.

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OMAFRA Ministry Position Statements

In recent months there has been a great deal of focus on the appropriateness of some farming practices. In response, the ministry is issuing Ministry Position Statements to provide clear direction to ministry staff on a variety of farming practices and to help deliver consistent messages to clients across the province. They are based on the best available technical expertise.

The eight farming practices were identified in staff meetings and in discussions with farm groups and municipalities as issues needing direction. Additional position statements may be released on new issues that arise from time to time.

Ministry **position** statements will be issued by senior OMAFRA managers from time to time to provide clear direction to staff on a variety of farming practices. **Policy statements** are issued by the Minister in relation to agricultural operations or normal farm practices under Section 9 of the *Farming and Food Production Protection Act*.

Rulings by the Normal Farm Practices Protection Board must be consistent with the Minister's policy statements. Consequently, policy statements have legal standing and position statements do not.

While position statements are not legally binding it is in the interest of individuals to follow them as they represent both years of ministry experience in the field and the best available technical knowledge. The ministry will consider developing more position statements to respond to significant issues as they arise.

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Farm Practices Position Statements, November, 1998

These OMAFRA position statements are provided to clearly state the ministry's position and to give direction on matters and issues related to farming and normal farm practices. These statements should not be confused with Policy Statements issued under the *Farming and Food Production Protection Act*. While no one is legally compelled to follow these position statements, it would be prudent to do so as they are based on many years of OMAFRA knowledge and experience

Nutrient Management Plans

Larger livestock farms exceeding 150 Livestock Units or with greater than 50 Livestock Units and more than 5 Livestock Units per tillable hectare should have a nutrient management plan. Third party reviews will assure that nutrient management plans are being properly developed. On a farm specific complaint basis, third party audit of the nutrient management plan implementation is recommended.

Size of Agricultural Operations

When constructing a livestock facility the following three components should be addressed: Minimum Distance Separation II, nutrient management plan and manure storage capacity. If the three components are properly followed, the size of the farm operation (number of livestock) is not an issue.

Land Ownership

Following good manure management practices is more important than the issue of who owns the land upon which the manure is produced or upon which the manure is applied. It is in the best interest of all parties, however, to develop and maintain written agreements when manure is to be applied to rented or leased land. Application rates should follow a nutrient management plan and records should be kept.

Distance Hauling Manure

Manure should be transported in an environmentally safe manner. While there may be practical and economic implications which limit the distance manure is hauled, the hauling distance is not an issue. However, extra scrutiny (e.g. on the transporting equipment) may be required for any nutrient management plan that stipulates hauling manure further than 20 kilometers from where it is produced.

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Manure Sale or Ownership Transfer

Selling or transferring the ownership of manure is an acceptable nutrient management plan option as long as the manure is intended to be handled/stored/utilized in a sound environmental manner. Agreements/contracts between the buyer/seller (taker/giver) help the parties understand their responsibilities and liabilities. Farmers who know that the manure they are selling or giving away is not going to be handled/stored/utilized in a sound environmental manner may find themselves being called on to deal with the consequences.

Manure Storage Capacity

Solid and liquid manure storages should be designed and constructed so that the manure can be spread on dry land and used efficiently by crops. The number of days that the manure storage should accommodate will be determined by the nutrient management plan. The minimum storage capacity for liquid manure systems is 200 days. It is unreasonable to require manure storage capacities in excess of nutrient management plan requirements.

Manure Storage Type

Manure storages are engineered structures and may be constructed of concrete, steel, clay, or other impervious material. They may be either covered or uncovered. All manure storages should be constructed in accordance with either the Ontario Building Code (and the National Farm Building Code) or the OMAFRA Pollution Control Manual (for earthen storages) including adequate safety fencing. Manure storages should also be sited in accordance with the Minimum Distance Separation II formula.

Minimum Distance Separation

New land uses, including the creation of lots, and new or expanding livestock facilities will comply with the Minimum Distance Separation formulae (MDS I and MDS II) as per Provincial Policy Statements under the *Planning Act*.

Summary

Livestock agriculture is a vital industry to Ontario. Proposals for larger livestock farms are becoming increasingly contentious and emotional issues. A number of tools for the planner were discussed and will help provide a framework in developing good proactive by-laws which will enable environmentally and economically sustainable growth in Ontario's livestock industry.

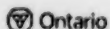
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For more information... regarding "Large Livestock Barns, Community Issues and the Role of the Municipality", contact Mike Toombs at: mtoombs@omafra.gov.on.ca

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